

ELECTRONICALLY FILED

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STUTMAN, TREISTER & GLATT, P.C.
 FRANK A. MEROLA
 (CA State Bar No. 136934)
 EVE H. KARASIK
 (CA State Bar No. 155356)
 ANDREW M. PARLEN
 (CA State Bar No. 230429),
 1901 Avenue of the Stars, 12th Floor
 Los Angeles, California 90067
 Telephone: (310) 228-5600
 Facsimile: (310) 228-5788
 Email: fmerola@stutman.com
ekarasik@stutman.com
aparden@stutman.com

SHEA & CARLYON, LTD.
 JAMES PATRICK SHEA
 (Nevada State Bar No. 000405)
 CANDACE C. CARLYON
 (Nevada State Bar No. 002666)
 SHLOMO S. SHERMAN
 (Nevada State Bar No. 009688)
 228 South Fourth Street, First Floor
 Las Vegas, Nevada 89101
 Telephone: (702) 471-7432
 Facsimile: (702) 471-7435
 Email: jshea@sheacarlyon.com
ccarlyon@sheacarlyon.com
ssherman@sheacarlyon.com

Counsel for the Official Committee of
 Equity Security Holders of USA Capital First Trust Deed Fund, LLC

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:	)	BK-S-06-10725-LBR
USA COMMERCIAL MORTGAGE COMPANY,	)	Chapter 11
Debtor.)	
In re:	)	BK-S-06-10726-LBR
USA CAPITAL REALTY ADVISORS, LLC,	)	Chapter 11
Debtor.)	
In re:	)	BK-S-06-10727-LBR
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,	)	Chapter 11
Debtor.)	
In re:	)	BK-S-06-10728-LBR
USA CAPITAL FIRST TRUST DEED FUND, LLC,	)	Chapter 11
Debtor.)	
In re:	)	BK-S-06-10729-LBR
USA SECURITIES, LLC,	)	Chapter 11
Debtor.)	

Affects

- ☐ All Debtors
☐ USA Commercial Mortgage Co.
☐ USA Securities, LLC
☒ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed
☒ USA First Trust Deed Fund, LLC

Date: April 26, 2007
 Time: 9:30 a.m.

**LIMITED RESPONSE OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS
 OF USA CAPITAL FIRST TRUST DEED FUND, LLC TO OMNIBUS OBJECTION OF USA
 CAPITAL REALTY ADVISORS, LLC TO MISFILED CLAIMS (AFFECTS DEBTORS USA
 CAPITAL REALTY ADVISORS, LLC AND USA CAPITAL FIRST TRUST DEED FUND, LLC)**

1 **TO THE HONORABLE LINDA B. RIEGLE, UNITED STATES BANKRUPTCY JUDGE:**

2 In response to the "Omnibus Objection of USA Capital Realty Advisors, LLC to
3 Misfiled Claims," (the "Objection") [docket no. 3019], the Official Committee of Equity Security
4 Holders of USA Capital First Trust Deed Fund, LLC (the "FTDF Committee") hereby submits a
5 limited response as follows:

6 **I.**

7 **PURPOSE OF RESPONSE.**

8 1. In the Objection, USA Capital Realty Advisors, LLC ("USA Realty")
9 objects to forty (40) proofs of claim filed against USA Realty on the grounds that "they are in
10 reality claims against either USACM or one of the Funds." Objection, at 3, ¶ 12. Where the
11 claims subject to objection "were filed against both USA Realty and the appropriate Debtor",
12 they are referred to as Duplicate Misfiled Claims. Id.

13 2. According to Exhibit A to the Objection, three of the Duplicate Misfiled
14 Claims are claims against USA Capital First Trust Deed Fund, LLC ("FTDF") and therefore
15 should be disallowed in their entirety against USA Realty. Specifically, USA Realty requests
16 that claim number 10726-00029 filed by Debra A Gant-Hickel & Russel J Hickel ("Hickel") in
17 the amount of \$33,245.88 (the "Hickel Claim"), claim number 10726-00005 filed by Frieda
18 Moon & Sharon C. Van Ert in the amount of \$35,583.34, and claim number 10726-00006 filed
19 by Frieda Moon & Sharon C. Van Ert ("Moon & Van Ert") in the amount of \$17,538.18
20 (together with claim number 10729-00004, the "Moon & Van Ert Claims") be disallowed in their
21 entirety against USA Realty. With respect to each of these claims, Exhibit A to the Objection
22 states that, "Claim is against FTDF and claimant has already filed the same claim against FTDF."

23 3. The FTDF Committee submits this response (a) to inform the Court that
24 the FTDF Committee has already objected to claims in the same amount filed against FTDF by
25 Hickel and Moon & Van Ert, and that such objections have already been ruled upon and
26 sustained by the Court; and (b) to ensure that any order sustaining the Objection (i) does not
27 deem the Moon & Van Ert Claims or the Hickel Claim to have been filed against FTDF and (ii)
28

1 does not conflict with the prior orders of the Court sustaining the FTDF Committee's objections
2 to claims filed by Hickel or Moon & Van Ert.

3 **II.**

4 **RELEVANT PROOFS OF CLAIM FILED AGAINST FTDF**

5 **A. Objections to Claims Filed by Moon & Van Ert**

6 4. On August 1, 2006, the FTDF filed the "Omnibus Objection of the
7 Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC to
8 Claims Based on Prepetition Equity Security Interests of USA Capital First Trust Deed Fund,
9 LLC" [docket no. 1066] (the "First Claim on Equity Objection"). Among the claims subject to
10 the First Claim on Equity Objection were claim number 10728-00006 and claim number 10728-
11 00007, both of which were filed by Moon & Van Ert in the respective amounts of \$35,583.34
12 and \$17,538.18. The FTDF Committee requested that such claims be reclassified as proofs of
13 interest in FTDF as the claims were based on membership interests in FTDF. On September 14,
14 2006, the Court entered an order granting the relief requested [docket no. 1278].

15 5. Claim number 10728-00006 (filed against FTDF and subsequently
16 reclassified as a proof of interest in FTDF) is identical to claim number 10726-00005 (filed
17 against USA Realty), which is the subject of the Objection. True and correct copies of claim
18 number 10728-00006 and claim number 10726-00005 are attached hereto as Exhibits "1" and
19 "2," respectively.

20 6. Claim number 10728-00007 (filed against FTDF and subsequently
21 reclassified as a proof of interest in FTDF) is identical to claim number 10726-00006 (filed
22 against USA Realty), which is the subject of the Objection. True and correct copies of claim
23 number 10728-00007 and claim number 10726-00006 are attached hereto as Exhibits "3" and
24 "4," respectively.

25 7. Because claims identical to the Moon & Van Ert Claims have been filed
26 against FTDF and have been reclassified as proofs of interest in FTDF pursuant to order of this
27 Court, in ruling upon the Objection, the Court should not deem the Moon & Van Ert Claims to
28 have been filed against FTDF.

1 **B. Objection to Claim Filed by Hickel**

2 8. On February 13, 2007, the FTDF filed the "Sixth Omnibus Objection of
3 the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC –
4 Claims Based on Prepetition Equity Security Interests of USA Capital First Trust Deed Fund,
5 LLC" [docket no. 2748] (the "Second Claim on Equity Objection"). Among the claims subject
6 to the Second Claim on Equity Objection was claim number 10728-00041, which was filed by
7 Hickel in the amount of \$33,245.88. The FTDF Committee requested that such claim be both
8 reclassified as a proof of interest in FTDF in the amount of \$31,976.00 and disallowed to the
9 extent it exceeded \$31,976.00, as the claim was based upon Hickel's membership interest in
10 FTDF as well as upon the alleged book value of that membership interest. On March 21, 2007,
11 the Court entered an order granting the relief requested [docket no. 3229].

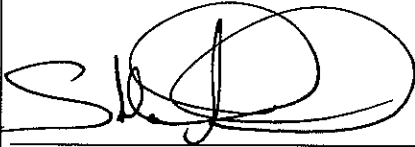
12 9. Claim number 10728-00041 (filed against FTDF and subsequently
13 reclassified in part as a proof of interest in FTDF and disallowed in part) is identical to claim
14 number 10726-00029 (filed against USA Realty), which is the subject of the Objection. True
15 and correct copies of claim number 10728-00041 and claim number 10726-00029 are attached
16 hereto as Exhibits "5" and "6," respectively.

17 10. Because a claim identical to the Hickel Claim has been filed against FTDF
18 and has been reclassified as a proof of interest in FTDF in part and disallowed in part pursuant to
19 order of this Court, in ruling upon the Objection the Court should not deem the Hickel Claim to
20 have been filed against FTDF.

21 **WHEREFORE**, the FTDF Committee requests that in ruling on the Objection,
22 the Court (i) not deem the Moon & Van Ert Claims or the Hickel Claim to have been filed
23 against FTDF; (ii) not enter an order inconsistent with the orders sustaining the FTDF
24 Committee's objections to claim numbers 10728-00006 and 10728-00007 filed by Moon & Van
25 Ert against FTDF, which claims have been reclassified as proofs of interest in the FTDF case;
26 and (iii) not enter an order inconsistent with the order sustaining the FTDF Committee's
27 objection to claim number 10728-00041 filed by Hickel against FTDF, which claim has been
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reclassified in part as a proof of interest in the FTDF case and disallowed in part.

Respectfully submitted this 18 day of April, 2007.



FRANK A. MEROLA (CA State Bar No. 136934),
EVE H. KARASIK (CA State Bar No. 155356), and
ANDREW M. PARLEN (CA State Bar No. 230429), Members of
STUTMAN, TREISTER & GLATT, P.C.
1901 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067
Telephone: (310) 228-5600

and

CANDACE C. CARLYON
SHLOMO S. SHERMAN
Shea & Carlyon, Ltd.
228 S. Fourth Street, First Floor
Las Vegas, NV 89101
Telephone: (702) 471-7432

COUNSEL FOR THE
OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS
OF USA CAPITAL FIRST TRUST DEED FUND, LLC